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January 31, 1986

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Honorable Jim Bates
Member of Congress
House of Representatives
Washington, D.C. 20515

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Dear Congressman Bates:

Hand Delivered

Thank you for your and the Honorable James J. Florio recent actions regarding Management responsibilities for toxic and hazardous wastes generated by the U.S. Navy ("USN"). These actions have proved to be of great assistance.

We have enclosed the analysis of the position recently adopted by the U.S. Navy that we provided to the California Department of Health Services. Given the volume of the enclosed material, I have thought it would be helpful to provide a summary overview of the issues.

1. The USN has decided that it will no longer manifest wastes generated by its ships which are undergoing repair and alteration work at commercial shipyards, insisting instead that the ship repair contractors or subcontractors ("Contractors") assume the USN's generator duties. This wrongful refusal to comply with California Hazardous Waste Control Law ("HWCL") requirements has created an untenable regulatory and economic dilemma for San Diego Contractors, and has already resulted in the issuance of one Notice of Violation to the USN by the San Diego County Department of Health Services.

2. In support of its position, the USN contends that it enjoys sovereign immunity from compliance with California hazardous waste regulations for materials not specifically listed as hazardous by federal regulations, e.g. asbestos and bilge water. The USN has also decided that a generator's legal and administrative duties are incompatible with the mobile nature of its vessels, and argues that it is not in any event the generator of hazardous wastes produced by its ships.

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3. Not one of these arguments is correct. As a result of prior inquiries by the Contractors, the California Department of Health Services has already concluded that the USN is the generator of the hazardous wastes produced by Navy ships. It is also clear that the USN has an affirmative statutory obligation to comply with California hazardous waste control requirements and is amenable to injunctive relief and sanctions for its violations of California law. Moreover, there is no legal basis, or compelling practical reason, for exempting the USN from compliance with the HWCL simply because its ships move. In fact, the mobility of Navy ships (and ships in general) makes their regulation all the more imperative. Were the State to exempt from HWCL compliance all ships which use California ports, literally hundreds of waste-generating sites would not be subject to direct State control.

4. Because the USN's policies are to be implemented nationwide, the problem which has first surfaced in San Diego will soon affect the entire State. It appears that the USN may already be implementing its new policies in the Bay area.

5. Given the enormous potential economic and regulatory impact of the USN's new position on San Diego Contractors, we are of course anxious to resolve this matter as quickly as possible. We have already had unsuccessful discussions with local Navy representatives, who are completely constrained by the new Navy-wide policies. We have, however, been able to schedule a meeting with Navy policymakers in Washington, D.C. on February 5, 1986.

We hope the enclosed analysis will facilitate the California Department of Health Services ("DHS") review of the matter. We will keep in close touch with DHS and provide further assistance if necessary.

We appreciate your attention to this important issue, and look forward to future discussions after you have an opportunity to review the enclosed material. In the meantime, please do not hesitate to call should you have any questions.

Sincerely,



Lee E. Wilson,
Secretary-Treasurer

enc.

cc: (w/encl)

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